In the High Court of Judicature at Madras

Dated: 12.7.2007

Coram:

The Honourable Mr.Justice F.M.Ibrahim Kalifulla
and
The Honourable Mr.Justice S.Tamilvanan

W.P.No.9548 of 2002

1. Union of India,
   rep. by the General Manager,
   Southern Railway,
   Chennai-3.

2. Chief Personnel Officer,
   Southern Railway,
   Chennai-3.

3. Divisional Personnel Officer,
   Bangalore Division,
   Southern Railway,
   Bangalore City-23. .. Petitioners

vs.

1. The Registrar,
   Central Administrative Tribunal,
   Madras.

2. S.Krishnamurthy .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, call for the records of the impugned order in O.A.No.267 of 2001 dated 3.1.2002 from the file of the Central Administrative Tribunal, Madras Bench and quash the same.

For petitioners : Mrs.Aparna Nandakumar
For respondent-2 : Mr.C.Rajan

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Order

(The Order of the Court was made by F.M.Ibrahim Kalifulla,J)

Union of India, represented by the General Manager of the Southern Railway, Chennai, the Chief Personnel Officer, Southern Railway, Chennai and the Divisional Personnel Officer, Southern Railway, Bangalore City, are the petitioners. The challenge in the Writ Petition is to the order of the Central Administrative Tribunal, dated 3.1.2002 passed in O.A.No.267 of 2001.

2. The Original Application was preferred by the second respondent herein, who was initially appointed by the Southern Railway as Ticket Collector on 25.5.1983 in the scale of pay of Rs.260-400, revised as Rs.950-1500. Subsequently, he became the Travelling Ticket Examiner (for short, TTE) with effect from 6.2.1985 in the scale of pay of Rs.330-560, which was revised as Rs.1200-2040. On 27.11.1986, he was found to be medically unfit for holding the B-One post and he was found to be fit to hold the posts under C-One and below. Applying the Rules relating to "Absorption of Medically Incapacitated Staff in Alternative Employment" as found in Chapter XIII of the Indian Railway Establishment Manual (Volume I, Revised Edition-1989) issued by the Government of India, Ministry of Railways (Railway Board), the second respondent was offered the alternative employment of Commercial Clerk in the revised scale of pay of Rs.975-1540, which was decategorised to him by order dated 5.3.1987. He also joined the said post. Subsequently, by order dated 21.11.1990, he was promoted as a Senior Commercial Clerk in the scale of pay of Rs.1200-2040.

3. Be that as it may, there is yet another post in the Headquarters (viz) Enquiry-cum-Reservation Clerk (for short, ECRC), which is a selection post. The second respondent got selected to the post of ECRC on 4.4.1992 and was appointed as ECRC. The second respondent made a representation on 5.6.1996 to the petitioners/Southern Railway on the footing that after his decategorisation in the year 1987, though the alternative employment was to the post of Commercial Clerk as per the order dated 5.3.1987, there were in fact vacancies in the post of ECRC and that he was directed to work only in that post till he was appointed in the post of ECRC itself on a later date. The second respondent therefore claimed that the alternative employment as ECRC should have been regularised with effect from 5.3.1987. The second respondent's representation on being rejected by the Southern Railway in their letter dated 22.7.1998, the second respondent approached the Tribunal praying for the relief that he should have been absorbed in the scale of Rs.1200-2040 as ECRC retrospectively from 27.11.1986 and his seniority in that category be restored. The second respondent also prayed for grant of further promotion for which he was legitimately entitled to.

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4. The above claim of the second respondent was resisted by the petitioners/Southern Railway by contending that the second respondent was granted the alternative employment strictly in accordance with the provisions contained in Paragraphs 1306 to 1312 in Chapter XIII-Absorption of Medically Incapacitated Staff in Alternative Employment as found in the Indian Railway Establishment Manual (Volume I, Revised Edition-1989) issued by the Government of India, Ministry of Railways (Railway Board), that having accepted and joined the alternative post of Commercial Clerk as per the Order dated 5.3.1987, it was not open for the second respondent to have come forward with the present claim of the year 2001, with retrospective effect from 1986. The petitioners/Southern Railway therefore contended that at the outset, the second respondent's claim was liable to be rejected on the ground of delay and laches.

5. It was then contended by the Southern Railway that the post of ECRC was a post in the Headquarters which is always filled up by way of selection and that the second respondent got selected to that post only in the year 1992 and therefore, there was no question of regularising his services in that post as from 5.3.1987. It was also contended that since there was no loss of emoluments at the time of decategorisation of the second respondent on medical unfitness while offering the alternative employment, no prejudice was caused to the second respondent and therefore, the second respondent was not entitled to any relief.

6. The Tribunal, after taking note of the fact that right from the date the alternative employment was accorded to the second respondent, he was discharging the duties of ECRC and since it was the responsibility of the petitioners-Southern Railway, the immediate employer of the second respondent to have identified the suitable post as per the provisions contained in the Manual, the second respondent was entitled for the relief as prayed for in the Original Application.

7. We have heard the learned Standing Counsel appearing for the petitioners-Southern Railway. She took us through the relevant provisions relating to medically incapacitated cases and the provisions for providing alternative employment to such cases as contained in Paragraphs 1306 to 1312 of the Manual. The learned Standing Counsel contended that when the alternative employment was offered to the second respondent in the year 1987 as Commercial Clerk and the second respondent accepted the same as per the order dated 5.3.1987 with effect from 6.2.1987 and has also earned subsequent promotion to the post of Senior Commercial Clerk as per the order dated 21.11.1990, without any loss of emoluments, his prayer for regularisation in the post of ECRC right from the year 1987, was not justified and the Tribunal ought not to have granted the said relief. According to the learned Standing Counsel, the post of ECRC is a post available in the Headquarters and the same is a selection post. The second respondent having been appointed to the said post after regular selection only from 4.4.1992, he was not entitled to claim the said status from

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5.3.1987 when he was not really appointed to the said post. The learned Standing Counsel also contended that the claim of the second respondent was liable to be rejected on the ground of delay and laches.

8. We have heard learned counsel for the second respondent also on the above aspects.

9. Having heard learned counsel for the respective parties and having perused the impugned order of the Tribunal and the relevant provisions applicable for giving alternative employment to the medically incapacitated cases, from Paragraph 1306 (3) of the Manual, we find that as a part of steps to be taken for finding alternative employment, the responsibility was primarily fixed on the officer under whom the Railway servant is directly serving to find out suitable alternative employment for him. Paragraph 1306 (3) also states that such an exercise shall be done by the Officer by trying to find alternative employment in the Officer's own District, Sub-District, Sub-Division, Office, Workshop and a Register should be maintained for that purpose. Under Paragraph 1306 (4), if there is no immediate prospect of employment in his own District, Sub-District, Sub-Division, etc., the name of the Railway servant with particulars should be circulated to all other offices or establishments where suitable employment is likely to be found. Under Paragraph 1310 of the Manual, it is stipulated that the offer of alternative employment must be in writing, stating the scale of pay and the rate of pay at which it is proposed to reabsorb him in service.

10. A reading of Paragraph 1306 (3) and (4) makes it abundantly clear that the primary responsibility has been cast on the Officer under whom the employee was working to identify the suitable alternative employment. With that prescription of the provisions in mind, when we peruse the impugned order of the Tribunal, we find that the following facts have been noted by the Tribunal in paragraph 8 of the impugned order:

> "8. In view of the medically decategorisation, the applicant moved the respondents to post him as Stenographer. The scale of TTE and the scale of Stenographer is one and the same. But the applicant was posed as Commercial Clerk which is a lower grade. In this connection, the Office Order issued by the respondents themselves dated 9.6.1987 has to be taken note of. The Office Order directed the applicant to take independent duties and the date of reporting may be informed to all concerned. It is the case of the applicant that even though he was substantively appointed consequent on the decategorisation as Commercial Clerk, he was discharging duties of Enquiry-cum-Reservation Clerk eversince that day. It is clear that the respondents have considered the Office Order dated 9.6.1987 and only thereafter, he was directed to

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handle the duties. It is also his case that vacancies are available in that post and that is why he has been asked to perform the duties. The fact that he is discharging independent duties is evident from the charge sheet dated 26.6.1989. During the course of argument, it was asked whether it is a fact that the applicant is discharging the duties of Enquiry-cum-Reservation Clerk, the learned counsel for the respondents took time on 12.12.2001 and finally on 19.12.2001 it was stated that the applicant all along discharged the duties as Enquiry-cum-Reservation Clerk. The submission of the learned counsel for the respondents is recorded by us in this order. The true fact as well as the submission of the learned counsel for the respondents is that the applicant will be discharging the duties of Enquiry-cum-Reservation Clerk from 1987."

11. A reading of the above said paragraph 8 of the impugned order of the Tribunal along with further observations contained in paragraph 10 of the impugned order of the Tribunal to the effect that "It is not the case of the respondents that there is no vacancy at that time nor they have taken any steps to ascertain the vacancies", as contained in Paragraph 1306 (3) and (4) of the Railway Manual. It is also not in dispute that the second respondent was continuously discharging the duties of ECRC in a vacancy right from 9.6.1987 onwards, by virtue of the order dated 9.6.1987 absorbing the second respondent as Commercial Clerk and he was given independent duties. When it comes to the question of offering alternative employment for a medically incapacitated case, in our considered opinion, the provisions contained in Paragraph 1306(3) and (4) of the Railway Manual providing for such alternative employment, would independently operate and there would be no question of the selection process in any way causing any impediment for offering such alternative employment.

12. In fact, in the present impugned order, the Tribunal has relied upon its earlier decision in Original Applications in O.A.Nos.934 and 1079 of 1992, dated 13.7.1994. That was also a case where one Thiru.V.Rajendra Prasad who was identically placed like that of the second respondent in this Writ Petition, who was initially appointed as TTE, was medically decategorised while holding that post, who was also offered the post of Commercial Clerk carrying the lesser scale of pay. In that case, it was noted that in one of the earlier orders of the Tribunal, dated 31.1.1991, the General Manager of the Railway considered the case of Thiru.Rajendra Prasad who on finding that there was a vacancy available for the post of ECRC, decided to offer him the said post as an alternative employment. However since such a decision was not implemented, Thiru.Rajendra Prasad preferred O.A.Nos.934 and 1079 of 1992, wherein the General Manager's offer came to be implemented by granting the relief in

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that post right from the date the alternative employment as Commercial Clerk was offered to Thiru.Rajendra Prasad.

13. The above action of the Railway only discloses that the post of ECRC irrespective of the fact that the post being a selection post, when it comes to the question of providing the said post as an alternative employment for a medically decategorised employee, the position that it was a selection post was never an impediment for granting the same as an alternative employment.

14. In the light of the above facts, and in the case on hand, when right from the date when the alternative employment was offered to the second respondent herein, namely on 9.6.1987, the second respondent was discharging independent duties in the post of ECRC, which fact has not been controverted by the Railways, while on the other hand, before the Tribunal, it was confirmed after getting necessary instructions from the petitioners-Railway by the learned counsel appearing for the petitioners before the Tribunal that the second respondent herein was all along discharging the duties of ECRC independently, we are convinced that the ultimate conclusion of the Tribunal that the vacancy existed in the post of ECRC, which ought to have been offered to the second respondent by virtue of the stipulations contained in Paragraph 1306 of the Manual and the failure of the petitioners in not having offered the said post while the second respondent was directed to discharge the functions in the post independently right from the order dated 9.6.1987, legally entitling the second respondent to claim for the relief as prayed for in the present Original Application.

15. We therefore do not find any illegality or irregularity in the impugned order of the Tribunal in having granted the relief as directed therein. There is no merit in this Writ Petition. The Writ Petition fails and the same is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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